

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2019-281-S**

IN RE:	)	
	)	
Application of Palmetto Utilities, Inc.	)	<b>REPLY TO RESPONSE OF</b>
for adjustment of rates and charges	)	<b>DEPARTMENT OF CONSUMER</b>
for, and modification to certain terms	)	<b>AFFAIRS TO APPLICANT'S</b>
and conditions related to the provision	)	<b>MOTION TO STRIKE AND</b>
of sewer service.	)	<b>FOR SANCTIONS</b>
_____	)	

Applicant, Palmetto Utilities, Inc. (“PUI” or “Company”), pursuant to S.C. Code Regs. 103-829.A (2012), and in accordance with Order No. 2020-46-H, submits its reply to the South Carolina Department of Consumer Affairs (“DCA”) June 12, 2020, Response to the Company’s June 5, 2020, Motion to Strike portions of the pre-filed direct testimony of three ORS witnesses and for the imposition of sanctions (“Motion”). For the reasons set forth herein, in the Motion, and in the Company’s Reply to the Response of the Office of Regulatory Staff (“ORS”) submitted contemporaneously herewith, the Motion should be granted.

**I. DCA MISREADS THE STATUTE**

Contrary to its assertion otherwise, S.C. Code Ann. §58-4-55 does not devolve on this Commission authority to determine “whether the identified statements and exhibits are confidential or proprietary.” DCA Response at 1. The statute, by its plain language, makes them so.

Moreover, the Commission’s role is to determine whether (a) the Commission needs to view the referenced documents and request that ORS file them under seal for that purposes and (b) whether they should be publicly disclosed. DCA not only misreads the statute, it misapprehends a main point of the Motion, which is to address the fact that ORS has already

violated it and usurped the Commission's prerogative on both accounts. DCA's flawed analysis should be rejected out of hand.

**II. FAIRNESS IS CERTAINLY IN THE EYES OF THE BEHOLDER – EXCEPT WHEN IT INVOLVES A CLEAR VIOLATION OF A STATUTE BY A STATE AGENCY WHICH IS LEGALLY OBLIGATED TO PROVIDE PUI WITH A FAIR RATE RELIEF PROCEEDING AND TREAT IT WITH EQUITY**

In its Response, DCA appears to contend that ORS's multiple and repeated violations of the Company's right to have matter it produces to ORS under §58-4-55(A) treated as confidential and proprietary and exempt from public disclosure should be ignored in the interest of developing "a Fair and Complete Record." As does ORS in its Response, DCA wholly ignores the two South Carolina Supreme Court precedents that require ORS to give PUI a fair rate relief proceeding, not engage in misconduct, and treat PUI with integrity and equity. *See Daufuskie* and *Peake*, cited in PUI's Motion. If ORS is permitted to violate PUI's statutory rights and ignore the admonitions of the Supreme Court, the record in this case will not be fair but will unfairly allow ORS to misrepresent the Company's cooperation in this proceeding for the sole purpose of justifying ORS's failure to preserve continued investment in utility facilities under S.C. Code Ann. §58-4-10(B). While that may be of no concern to DCA under its statutory charge, to assert that ORS's misconduct should be left unaddressed is the exact opposite of "fair."

**III. THE LIMITED STRIKING OF TESTIMON IS A PROPER SANCTION**

DCA argues that the Court of Appeals decision in *Kramer* is inapposite because it involves a situation in which an expert was excluded from testifying at all because his identity was withheld in discovery. Again, DCA is operating under a misapprehension of the Motion. The Company does not seek to exclude any witness from testifying and it is patently obvious that

PUI makes no claim that witnesses have not been identified. The Company only seeks to have portions of these witnesses prefiled testimony and exhibits – clearly disclosed to the public by ORS in contravention of a statutory mandate that it not do so and in derogation of the Commission’s authority – stricken. That is why its citation to *Kramer* is prefaced as “*cf.*” See Motion at 4.

#### IV. CONCLUSION

For the foregoing reasons, and those set out in the Motion and in PUI’s reply to the ORS response (which is incorporated herein by reference), the Company’s request for relief should be granted. The improperly disclosed matter and related ORS testimony should be stricken because it directly contravenes a mandatory statute binding upon ORS. A monetary sanction should be imposed upon ORS to deter it from repeating its misconduct. The Commission should resist DCA’s urging that it accept ORS’s recommendation to deprive PUI of its right to a fair rate relief proceeding in which ORS is legally obligated to respect the Company’s legitimate financial interests, preserve continued investment in utility facilities, and treat the Company equitably.

Respectfully submitted,

s/John M. S. Hoefer  
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Columbia, South Carolina  
 This 16<sup>th</sup> day of June, 2020